

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

CHARLENE E IVERY BABA

Claimant

: **APPEAL NUMBER:** 23B-UI-00338

: **ALJ HEARING NUMBER:** 23A-UI-00338

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**EMPLOYMENT APPEAL BOARD
DECISION**

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NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.11-16, 96.6-2

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

We affirm that an income tax refund was authorized in this case, and that the appeal was timely. In the Claimant's appeal to the Administrative Law Judge, which was timely, the Claimant objected to taking the portion of the refund which was attributable to her spouse's income. Since the appeal was timely this now triggers additional proceedings which may reduce the amount of the *intercept*.

Rule 871 IAC 25.16(3) states that "[i]n the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset." In such an event "the department notifies the department of revenue to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset." 871 IAC 25.16(3). Here the Claimant did make a timely request, as found by the Administrative Law Judge, and so although we find that the intercept is authorized by law, we also will **remand** this case to Iowa Workforce, Benefits Bureau to process the Claimant's request to split the refund to ensure her spouse's portion of the refund is not offset.

We note that the mere fact that the intercept may be reduced will *not* affect the amount of the *overpayment*. Reducing the intercept allows the Claimant's spouse to retain the appropriate proportion of the refund, but it does not mean the Claimant is relieved of an obligation to repay the outstanding portion of the overpayment.

DECISION:

The decision of the Administrative Law Judge dated February 21, 2023 is **AFFIRMED as modified**. We affirm that the intercept is authorized, but the amount of the intercept is to be determined by Iowa Workforce, and the Department of Revenue, under rule 25.16(3). We **remand** this matter to Iowa Workforce, Benefits Bureau to process the Claimant's request to split the refund to ensure her spouse's portion of the refund is not offset.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv